314 U.S. 61
(21)
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No 615

Supreme Court of the United States.

OCTOBER TERM, 1941.

CHARLES W. GAMMONS, FRANK B. LAWLER, AND LUTHER HILL, EXECUTORS AND TRUSTEES UNDER THE WILL OF BRYAN R. HOUGHTON, *Plaintiffs, Appellants, Petitioners,*

v.

THOMAS B. HASSETT, COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF MASSACHUSETTS, *Defendant, Appellee, Respondent.*

PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

AND

BRIEF IN SUPPORT THEREOF.

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Attorney for Petitioner.

LUTHER HILL,
Of Counsel.

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INDEX.

	Page
PETITION	1
Opinions below	1
Jurisdiction	2
Questions presented	2
Statute involved	2
Statement	3
Specification of errors to be urged	5
Reasons for granting the writ	6
Prayer	6
BRIEF	7
Statement	7
Summary of argument	7
Argument	7
1. The question one of fact upon all the circumstances existing at the testator's death	8
2. The law in the U.S. Supreme Court	8
3. The law in the Circuit Court of Appeals in other circuits	11
4. The decisions relied on in the opinions distinguishable	13
5. The Massachusetts law	13
6. The intent of Congress to encourage charitable gifts	14
Conclusion	14

TABLE OF AUTHORITIES CITED.

Brown v. Commissioner of Internal Revenue, 50 F. (2d) 842	12
City Bank Farmers Trust Co. v. United States, 74 F. (2d) 692	11
Commissioner v. Bonfils, 115 F. (2d) 788	12
Cotton v. Danville, 301 Mass. 380	13
Dumaine v. Dumaine, 301 Mass. 214	13

Page

Farmers Loan & Trust Co. v. Minnesota, 280 U.S. 204 9
First National Bank of Birmingham v. Snead, 24 F. (2d) 186 12
Hartford-Connecticut Trust Co. v. Eaton, 36 F. (2d) 710 11
Humes v. United States, 276 U.S. 487 10, 13
Ithaca Trust Co. v. United States, 279 U.S. 151 6, 8, 9, 10, 11, 13
Knoernschild v. Commissioner, 97 F. (2d) 213 13
Lyeth v. Hoey, 305 U.S. 188 9
Merchants Trust Co. v. Russell, 260 Mass. 162 13
Morgan v. Commissioner, 309 U.S. 78 9
St. Louis Union Trust Co. v. Burnet, 59 F. (2d) 922 12
United States v. Provident Trust Co., 291 U.S. 272 6, 10, 12, 14

Act of February 13, 1925, C. 229, Sec. 1; 43 Stat. 938; U.S. Code, Title 28, Sec. 347 2
Act of February 13, 1925, C. 229, Sec. 8; 43 Stat. 940; U.S. Code, Title 28, Sec. 350 2
Revenue Act of 1926, C. 27, 44 Stat. 9, as amended 2, 9
U.S. Code, Title 26, Sec. 412 3

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THOMAS B. HASSETT, COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF MASSACHUSETTS, *Defendant, Appellee, Respondent.*

PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States.

The petitioners, Charles W. Gammons, Frank B. Lawler, and Luther Hill, Executors and Trustees under the will of Bryan R. Houghton, late of Stoneham, Massachusetts, pray that a writ of certiorari may issue to review the judgment of the United States Circuit Court of Appeals for the First Circuit entered June 27, 1941, affirming the judgment of the District Court of Massachusetts entered January 31, 1941, in an action for refund of an estate tax deficiency assessment upon a residuary gift to charities.

Opinions Below.

The opinion of the District Court (R. 38) is reported in 36 F. Supp. 529. The opinion of the Circuit Court of Appeals (R. 111) is reported in 121 F. (2d) 229.

Jurisdiction.

The jurisdiction of this Court is invoked under the Act of February 13, 1925, C. 229, Sec. 1; 43 Stat. 938; U.S. Code, Title 28, Sec. 347.

This petition is filed within three months from the date of the rendering of the judgment of the Circuit Court of Appeals as required by Section 8 of the Act of February 13, 1925, C. 229; 43 Stat. 940; U.S. Code, Title 28, Sec. 350.

Questions Presented.

1. Whether the estate tax deficiency assessed upon the residuary gift to charities was improperly assessed and should be refunded.

2. Whether the residuary gift to the charities was so uncertain at the date of the testator's death that it was not deductible from the gross estate for the purpose of determining the estate tax, and was therefore taxable.

3. Whether, in determining if a residuary gift to charity is too uncertain to be deductible from the gross estate for estate tax purposes, the Court is arbitrarily limited to the wording of the will creating the gift, or whether the question is one of fact depending on all the circumstances existing at the testator's death.

Statute Involved.

Revenue Act of 1926, C. 27, 44 Stat. 9:

"Sec. 303. For the purpose of the tax the value of the net estate shall be determined—

"(a) In the case of a resident, by deducting from the value of the gross estate—

. . . . . .

"(3) The amount of all bequests, legacies, devises, or transfers, to or for the use of the United States, any State, Territory, any political subdivision thereof, or the District of Columbia, for exclusively public purposes, or to or for the use of any corporation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, . . ." (U.S. Code, Title 26, Sec. 412.)

Statement.

There is no controversy as to figures, either as to the correctness of the amount of the deduction claimed in the estate tax return, or of the deficiency tax assessed because of the disallowance of the deduction.

The facts as found by the District Court appear in the opinion of the District Court (R. 38), the Stipulation of Facts (R. 11), and the Plaintiffs' Requests for Findings of Fact (R. 34) so far as given in substance in the opinion (R. 41).

Bryan R. Houghton died June 30, 1936, at the age of ninety-two, leaving a widow, Mary F. Houghton, aged ninety-three. The couple had never had any children and Mr. Houghton had no near relatives (R. 38).

By Article III, paragraph 1, of Mr. Houghton's will the residue was given to trustees:

> "to be held by them, the income thereof, after paying all reasonable expenses of the trust, including a reasonable compensation for the services of my trustees, and so much of the principal thereof as my said wife may at any time and from time to time need or desire, to be paid to my said wife during her life." (R. 16.)

The widow had no power of disposition by will. Upon the death of the wife, the trustees were to divide the residue

equally between the New England Grenfell Association, of 25 Huntington Avenue, Boston, Massachusetts, and the Society for the Prevention of Cruelty to Animals of Boston, Massachusetts, free and discharged of any trust (R. 17). The charities named are charitable corporations within the Revenue Acts (R. 13).

At the time of Mr. Houghton's death, his gross estate had a fair valuation of approximately $275,000.00. On the same date his wife's property had a fair valuation of approximately $190,000.00 (R. 39). The Houghtons had lived for more than forty years in a house valued at $7,000.00. Their wants and mode of life were very conservative and their combined income, which varied between $15,000.00 and $25,000.00 a year, was greatly in excess of their needs (R. 39). Their standard of living was fixed in fact and was definitely ascertained in terms of money and their combined incomes were greatly in excess of what they needed or desired to maintain their standard of living (Plaintiffs' Requests Nos. 3 and 4, R. 34; granted, R. 41).

At the time of her husband's death, Mrs. Houghton, aged ninety-three, had been bedridden for at least two years. She had been unable to handle her business affairs. Mr. Houghton handled them for her. Her physical condition was such at the time of his death that it was immediately necessary that someone else take charge of her affairs. This was evidenced by the fact that a conservator was appointed on July 8, 1936 (before the will was probated, R. 12), to assume charge of her property (R. 38).

Mrs. Houghton by a codicil executed May 29, 1936, coincidentally with the execution of Mr. Houghton's last codicil, had left the residue of her estate after her husband's death to the trustees under his will to be added to the trust that he set up for the two charities referred to therein (R. 39).

The trial judge found that

> "It is reasonable to assume that Mr. Houghton did not expect that she would have any reason to invade the corpus of his trust, and it may be further assumed, since she had shown a decided interest in the two charities involved, that she would restrain from destroying his charitable gift *by her mere whim.*" (Italics ours.) (R. 40.)

The District Court, while its findings show that there was no need, or inclination, or even any capability, on the part of the widow to invade principal or any likelihood that she would attempt to do so, based its decision for the defendant solely on the wording of the will (R. 40, 41). The Circuit Court of Appeals affirmed the decision.

Specification of Errors to be Urged.

The Circuit Court of Appeals erred

1. In holding that the deductibility of the gift to charities must depend exclusively on the extent of the power given the wife to invade principal by the terms of the will, regardless of the circumstances existing at the testator's death bearing on the possibility of such invasion.

2. In not deciding that the gift over to charities was deductible, because at the instant of the testator's death there was no uncertainty that the charities would receive the gift in full on the termination of the life estate, appreciably greater than the general uncertainty that attends human affairs.

3. In affirming the judgment of the District Court.

4. In holding that it was unnecessary to construe the power given the life tenant in accordance with the law of Massachusetts; and in deciding the question of local law in a way in conflict with applicable local decisions.

Reasons for Granting the Writ.

1. The decision of the Circuit Court of Appeals is contrary to the law as established by the decisions of this Court.

> *Ithaca Trust Co.* v. *United States,* 279 U.S. 151.
> *United States* v. *Provident Trust Co.,* 291 U.S. 272.

2. The decision of the Circuit Court of Appeals is in conflict with decisions of the Circuit Court of Appeals in the Second, Third, Fifth, Eighth and Tenth Circuits.

3. The decision of the Circuit Court of Appeals on the question of Massachusetts law is contrary to the decisions of the Courts of Massachusetts.

4. The result of the decision is that a gift to charity is taxed, contrary to the letter and spirit of the Revenue Act.

Prayer.

Wherefore the petitioners respectfully pray that this petition should be granted.

Respectfully submitted,

CHARLES W. GAMMONS,
FRANK B. LAWLER,
LUTHER HILL,
Executors and Trustees under
the will of Bryan R. Houghton,
By HAROLD WILLIAMS,
Their Attorney.

LUTHER HILL,
Of Counsel.